



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 997 of 2011 and

M.P. (MD) No. 1 of 2011

WEB COPY

Valliyammal

... Appellant/Appellant/Defendant

Vs.

A. Sooriyanarayanan @ Sooriyanarayana Moorthy,

... Respondent/Respondent/Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 30.03.2011 passed in A.S.No.148 of 2007 on the file of the Subordinate Judge, Valliyoor, confirming the Judgment and Decree dated 26.10.2006 passed in O.S.No.24 of 2005 on the file of the Principal District Munsif, Valliyoor.

For Appellant	: Mr.J.Ashok, for M/s.Jayapaul Associates.
For Respondent	: Mr.S.Mani

J U D G M E N T

The defendant in O.S.No.24 of 2005 on the file of the Principal District Munsif, Valliyoor, is the appellant in this second appeal.

2.The respondent Sooriyanarayanan @ Sooriyanarayana moorthy filed the said suit for recovering a sum of Rs.81,296/- from the appellant herein with interest. The suit was laid on the strength of Ex.A.1 promissory note dated 16.08.2004. The case of the plaintiff is that his relative Tmt.Ovia, introduced her colleague to the appellant herein and the appellant herein borrowed a sum of Rs.73,771/- on 16.08.2004 and executed promissory note agreeing to repay the said amount with interest at 2% p.a. The defendant contrary to her assurances, did not repay the principal amount or the interest. Therefore, the plaintiff issued Ex.A.2 notice dated 07.12.2004. Though the appellant received the same as evidenced by Ex.A.3 acknowledgement card, she did not choose to comply with the demand set out in the notice. Therefore, the suit came to be laid. The appellant filed her written statement denying the suit claim. According to the appellant, the suit promissory note had been fabricated. She also attributed motive to Ovia.



3. The plaintiff examined himself as P.W.1, Oviya was examined as P.W.2 and one M.Selvakumari was examined as P.W.3. Ex.A.1 to Ex.A.7 were marked. The defendant examined herself as D.W.1 and Ex.B.1 to Ex.B.4 were marked.

4. The trial Court by Judgment and Decree dated 26.10.2006 decreed the suit as prayed for.

5. Aggrieved by the same, the defendant filed A.S. No.148 of 2007 before the Sub Court, Valliyoor. The first appellate Court by the impugned Judgment and Decree dated 30.03.2011 dismissed the appeal and confirmed the Judgment and Decree passed by the trial Court. Challenging the same, this second appeal came to be filed.

6. Though the second appeal is of the year 2011 and interim stay has been granted till date, it has not been admitted. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and submitted that this Court may formally admit the appeal and after putting the respondent on notice, take up this second appeal for consideration.

7. I am not persuaded by the said request. It is true that the appellant had denied her signature in ExA.1 promissory note. But then, the learned trial Munsif after calling for admitted signatures of the defendant had compared her signature with the disputed signature in Ex.A.1 and come to the conclusion that Ex.A.1 had actually been executed by the defendant. The contention of the appellant's counsel is that the Court could not have undertaken the exercise of comparison on its own. In *Thirumuruga Ramalingam Vs. Mohamed Hanifa* (2015 SCC OnLine Mad 440), a learned Judge of this Court held as follows :

"9. These provisions have been subject matter of several decisions of this Court. No doubt, a Court does not exceed its power under section 73, if it compares the disputed signatures with the admitted signature of the party so as to reach its own conclusions. Though there is no legal bar to the Judge using his own eyes, to compare the disputed signatures without the aid of an handwriting expert, the Judge should hesitate to render his findings with regard to the identity of the handwriting. The reason is that such opinion forms the sheet anchor against a person whose signature is compared. Such venture by the first appellate Court to compare the signatures by itself does not mean that the Court had assumed the role of an expert. Section 73 of Evidence Act expressly enables the Court to compare the disputed signature. Such comparison of signature by an expert is not done by the parties, may be for the reason of ignorance or



To:

1. The Subordinate Judge,
Valliyoore.

2. The Principal District Munsif,
Valliyoore.

3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.S.MANI, Advocate (SR-19157[F] dated 10/06/2021)

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KMV (CO)

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